

Message Text

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TO AMEMBASSY MANILA IMMEDIATE

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CINCPAC

C O N F I D E N T I A L STATE 187105

MANILA FOR USDEL, CINCPAC ALSO FOR POLAD

E.O. 11652: GDS

TAGS:MARR, MNUC, RP

SUBJ: PHILIPPINE BASE NEGOTIATIONS: PROCEDURES FOR
VISITS OF NPW

REF: MANILA 11061 USDEL 160 DTG 80153Z JUL 76

FOLLOWING IS REPEAT OF MANILA 3221 DTG 310749Z MAR 69,
TO SECSTATE WASHDC, INFO AMEMBASSY CANBERRA, AMEMBASSY
LONDON, AMEMBASSY WELLINGTON, CINCPAC, CINCPACREPPHIL

QUOTE SUBJECT: TERRITORIAL SEAS: INNOCENT PASSAGE: AND
NUCLEAR POWERED SHIP CALLS AT PHIL PORTS

QUOTE REF: MANILA 3220

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QUOTE FOLLOWING IS NOTE WHICH ACTING SECRETARY HANDED

AMBASSADOR MARCH 31 (SEE REFTEL):

QUOTE

THE DEPARTMENT OF FOREIGN AFFAIRS PRESENTS ITS COMPLIMENTS TO THE EMBASSY OF THE UNITED STATES OF AMERICA AND HAS THE HONOR TO ACKNOWLEDGE RECEIPT OF THE LATTER'S NOTE NO. 169, DATED 10 MARCH 1969.

THE PHILIPPINE GOVERNMENT IS AWARE OF THE POSITION OF THE UNITED STATES GOVERNMENT AS EMBODIED IN THE EMBASSY'S NOTE NO. 836, DATED 18 MAY 1961, WHICH IS REAFFIRMED IN NOTE NO. 169 ABOVE-MENTIONED.

THE POSITION OF PHILIPPINE GOVERNMENT AS PREVIOUSLY STATED IS AS FOLLOWS:

(1) THAT THE BASE LINES OF THE PHILIPPINE TERRITORIAL SEA ARE DEFINED IN REPUBLIC ACT NO. 3046, AS AMENDED BY REPUBLIC ACT NO. 5446, AND ITS OUTER LIMITS ARE DEFINED IN THE TREATY OF PEACE BETWEEN THE UNITED STATES AND SPAIN ON 10 DECEMBER 1898, WHICH DEFINITION WAS SUBSEQUENTLY INCORPORATED IN THE CONSTITUTION OF THE PHILIPPINES:

(2) THAT THE PHILIPPINES, NOT BEING A SIGNATORY, IS NOT BOUND BY THE GENEVA CONVENTION ON THE TERRITORIAL SEA AND CONTIGUOUS ZONE OF 29 APRIL 1958, IN PARTICULAR, BY ITS ARTICLES DEFINING THE RIGHT OF INNOCENT PASSAGE THROUGH THE TERRITORIAL SEA:

(3) THAT THE ABOVE-MENTIONED CONVENTION DOES NOT GRANT THE RIGHT OF INNOCENT PASSAGE THROUGH INTERNAL OR INLAND WATERS AS DISTINGUISHED FROM THE TERRITORIAL SEA:

(4) THAT THE AFORESAID CONVENTION DEFINES PASSAGE TO BE INNOCENT "AS LONG AS IT IS NOT PREJUDICIAL TO THE PEACE, GOOD ORDER OR SECURITY OF THE COASTAL STATE", AND

(5) THAT, CONSEQUENTLY, NO ARMED FOREIGN PUBLIC VESSEL MAY EXERCISE THE RIGHT OF INNOCENT PASSAGE THROUGH THE PHILIPPINE TERRITORIAL SEA, MUCH LESS THROUGH PHILIPPINE
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INTERNAL OR INLAND WATERS, WITHOUT PREVIOUS ARRANGEMENT WITH, OR PRIOR PERMISSION OF, THE PHILIPPINE GOVERNMENT.

THE PHILIPPINES HAS CONSISTENTLY MAINTAINED IN THE FIRST (1958) AND SECOND (1960) GENERAL CONFERENCE ON THE LAW OF THE SEA THAT THERE CAN BE (NO SUCH?) SEAS WITHIN THE WATERS COMPRISED BY THE TERRITORIAL LIMITS OF THE PHILIPPINES. UNFORTUNATELY, THE TWO GENEVA CONFERENCES

ABOVE-MENTIONED WERE NOT ABLE TO RESOLVE THE QUESTION OF THE BREADTH OF THE TERRITORIAL SEA. AS SENATOR TOLENTINO POINTED OUT AT THE SECOND GENEVA CONFERENCE, "THE RULES IN THAT CONVENTION ON THE TERRITORIAL SEA AND THE CONTIGUOUS ZONE ARE LITERALLY HANGING IN THE AIR, BECAUSE THERE IS NO GENERAL AGREEMENT AS TO WHAT PORTION OF THE SEA THOSE RULES ARE TO APPLY". SENATOR TOLENTINO ALSO STRESSED THAT NO INTERNATIONAL AGREEMENT COULD IMPAIR PHILIPPINE SOVEREIGNTY OVER HER TERRITORIAL WATERS AS DEFINED IN THE TREATY OF PARIS OF 10 DECEMBER 1890, THE TREATY BETWEEN SPAIN AND THE UNITED STATES DATED 7 NOV 1900, AND THE TREATY BETWEEN THE UNITED STATES AND THE UNITED KINGDOM OF 2 JANUARY 1930. HE FURTHER CONTENDED THAT ANY RULE WHICH THE SECOND GENEVA CONFERENCE MAY ADOPT ON THE BREADTH OF THE TERRITORIAL SEAS WOULD NOT APPLY TO THE JURIDICAL REGIME OF HISTORIC WATERS AND THE STUDY OF WHICH WAS ENTRUSTED TO THE INTERNATIONAL LAW COMMISSION BY RESOLUTION NO. 1453 OF THE UN GENERAL ASSEMBLY, DATED 7 DECEMBER 1959, FOR THE PHILIPPINES CLAIMS THAT HER TERRITORIAL WATERS AS DEFINED ABOVE ARE "HISTORIC WATERS" WITHIN THE MEANING OF THE GENERAL ASSEMBLY RESOLUTION.

IN THE PHILIPPINE INDEPENDENCE ACT, OTHERWISE KNOWN AS THE TYDINGS-MCDUFFIE LAW, 1934, THE CONGRESS OF THE UNITED STATES CATEGORICALLY RECOGNIZED THAT THE BOUNDARIES OF THE PHILIPPINES ARE SET FORTH, INTER ALIA, IN ARTICLE III OF THE TREATY BETWEEN THE UNITED STATES AND SPAIN DATED 10 DECEMBER 1898. IT IS, THEREFORE, BEYOND QUESTION THAT THE UNITED STATES GOVERNMENT HAS RECOGNIZED THE BOUNDARIES OF THE PHILIPPINES AS EMBODIED IN THE PHILIPPINE INDEPENDENCE ACT AND THE CONSTITUTION OF THE PHILIPPINES. IT IS NOTED, MOREOVER, THAT THE CONSTITUTION OF THE PHILIPPINES

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WAS CERTIFIED BY THE PRESIDENT OF THE UNITED STATES AS CONFORMING TO THE PROVISIONS OF THE PHILIPPINE INDEPENDENCE ACT.

THE RIGHT OF INNOCENT PASSAGE IS, HOWEVER, CONCEDED TO UNITED STATES PUBLIC VESSELS UNDER ARTICLE IV OF THE MILITARY BASES AGREEMENT, PARTICULARLY BETWEEN PHILIPPINE PORTS AND UNITED STATES MILITARY BASES THROUGHOUT THE PHILIPPINES, PROVIDED THAT IN CASE OF ENTRY INTO A PHILIPPINE PORT APPROPRIATE NOTIFICATION UNDER NORMAL CONDITIONS SHALL BE MADE TO THE PHILIPPINE AUTHORITIES.

IN THIS CONNECTION, REFERENCE IS MADE TO THE DEPARTMENT'S NOTES NOS. 878 AND 12989, RESPECTIVELY DATED 26 FEBRUARY AND 1 OCTOBER 1964 IN WHICH THE PHILIPPINE GOVERNMENT TOOK

THE POSITION THAT ARTICLE IV OF THE MILITARY BASES AGREEMENT DOES NOT COVER NUCLEAR-POWERED PUBLIC VESSELS WHICH COULD NOT HAVE BEEN IN THE MIND OF THE PARTIES WHEN THE SAID AGREEMENT WAS CONCLUDED INASMUCH AS THIS TYPE OF VESSEL WAS NOT YET IN EXISTENCE IN 1947. IN VIEW THEREOF, NUCLEAR-POWERED PUBLIC VESSELS MUST SECURE THE PRIOR CLEARANCE OF THE PHILIPPINE GOVERNMENT BEFORE ENTERING PHILIPPINE TERRITORIAL WATERS.

THE DEPARTMENT AVAILS ITSELF OF THIS OPPORTUNITY TO RENEW TO THE EMBASSY THE ASSURANCE OF ITS HIGHEST CONSIDERATION.
END QUOTE WILLIAMS END QUOTE. KISSINGER

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